

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DARRELL KING,

Plaintiff,

v.

M/V DYNASTY, her tackles, appurtenances,
cargo, IN REM, and her owner and operators ,
AMERICAN SEAFOODS CO., IN
PERSONUM

Defendants.

NO. 09-792 RSL

DEFENDANT AMERICAN SEAFOODS'
REPLY RE MOTION TO DISMISS
PLAINTIFF'S CLAIMS

**NOTE FOR MOTION CALENDAR:
Friday, March 26, 2010**

Defendant American Seafoods Company LLC ("ASC") respectfully submits its reply regarding its motion to dismiss plaintiff's case for failure to comply with discovery.

Plaintiff has not responded "directly" to defendant's motion. He did file a one line motion to "reopen the case" on March 4th, i.e., after this motion was filed. The Court subsequently issued an Order on March 10th striking plaintiff's motion since the case had not been terminated or closed, nor had the case schedule been altered in any way. Plaintiff's opposition to ASC's motion to dismiss was due this past Monday, but he filed no opposition. A party's failure to file an opposition "may be considered by the court as an admission that the motion has merit." CR 7(b)(2).

1 It bears noting that plaintiff has filed two papers with the Court in the past month that
2 can be described as strange.

3 By way of background, on January 12th, ASC filed a motion to compel plaintiff to
4 answer discovery and to produce Initial Disclosures (dkt. 9), both of which were due last
5 summer. The Court issued an Order on February 5th giving plaintiff seven days to provide
6 Initial Disclosures and answers to ASC's discovery requests. Dkt. 11. Plaintiff did not
7 comply with this order.
8

9 ASC then prepared a motion to dismiss for non-compliance, but on February 24th
10 before ASC's motion was filed, plaintiff filed a "Motion and Declaration and Response to
11 Order to Compel and Notice of Electronic Failure" in which counsel represented that his non-
12 compliance with the pending Court order was caused by a broken fax machine. Dkt. 12.
13 Plaintiff requested until the end of that day to comply with the discovery order. Id. The Court
14 issued an order the next day pointing out the obvious, i.e., fax machines have nothing to do
15 with receiving Orders and making filings through the ECF system. Dkt.13. Counsel was
16 directed to comply with the Court's ECF system. The Court also gave plaintiff an extension
17 of its prior order and allowed him until the end of the prior day to comply with its Order to
18 produce Initial Disclosures and answers to ASC's discovery (as plaintiff represented it would
19 do).
20

21 However, plaintiff did not comply with the Court's February 5th or 25th orders. He has
22 never produced discovery answer. Although plaintiff did produce "Initial Disclosures" to
23 ASC on February 26th, he merely sent back the same documents that ASC had produced to
24 plaintiff last summer. Because discovery was not produced, ASC filed this motion to dismiss
25 on March 4.

1 On March 9th, plaintiff made his second curious filing, asking the Court to reopen the
2 case. Although that motion has no relevance to ASC's motion (one might characterize it as
3 putting the cart before the proverbial horse), plaintiff's counsel made one relevant comment
4 therein, stating that he "has complied in full with the prior order of this court to furnish
5 discovery requests by this court by the deadline established in such order." Dkt. 17. As
6 previously stated, this representation is false since no discovery responses have ever been
7 produced.
8

9 ASC's Interrogatories and Requests for Production of Documents were served on July
10 2, 2009. Plaintiff has ignored repeated letters, two motions, and two Court orders to produce
11 responses. ASC does not know what else it can do to get plaintiff to cooperate in discovery,
12 particularly since plaintiff has taken no action to prosecute this case apart from filing his
13 Complaint. Under the circumstances, defendant ASC submits that dismissal is warranted.

14 **SANCTIONS**

15 ASC also seeks an award of monetary sanctions for having to file this motion. ASC's
16 counsel affirms under oath that he spent 2.3 hours time preparing this reply on the motion to
17 dismiss the case. ASC requests that as a sanction it be awarded this time against plaintiff and
18 his counsel at a rate of \$300 per hour, or \$690. ASC requests a total award for sanctions
19 related to its discovery motion and motion to dismiss in the total amount of \$2190.
20

21 **CONCLUSION**

22 For the foregoing reasons, defendant American Seafoods Company LLC respectfully
23 requests that this action be dismissed pursuant to in its entirety and with prejudice.
24
25

1 DATED this 26th day of March, 2010.

2 GASPICH & WILLIAMS PLLC

3
4 s/Anthony J. Gaspich
5 Anthony J. Gaspich, WSBA No. 19300
6 Russell R. Williams, WSBA No. 21203
Attorneys for Defendants American Seafoods
Company LLC

7
8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on March 26, 2010, I electronically filed the foregoing with the
10 Clerk of the Court using the CM/ECF, which will send notification of such filing to the
11 following: Horton Smith, hrtnsmith@gmail.com

12
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